SUPREME COURT OF THE UNITED STATES.

No. 136.

ALEXANDRIA CANAL COMPANY, PLAINTIFF IN ERROR,

vs.

FRANCES SWANN.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF COLUMBIA IN AND FOR THE COUNTY OF WASHINGTON.

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Style of court.

DISTRICT OF COLUMBIA, *set.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-seventh day of the same month, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth.

Present: The honorable William Cranch, chief judge, the honorable Buckner Thruston, and the honorable James S. Morsell, ass't judges; Alexander Hunter, esq'r, marshal; William Brent, clerk.

In the records of the proceedings of the said court, among others are the following, to wit:

THE ALEXANDRIA CANAL CO., *pl'ff in error,*
vs.
FRANCES SWANN, *def't in error.*

Be it remembered, that heretofore, to wit, on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-one, the said Francis Swann, by Walter Jones, esquire, her attorney, produced and filed in court here the record of the proceedings of certain pleas before the honorable the judges of the circuit court of the District of Columbia for the county of Alexandria, the venue having been changed to the circuit court of the District of Columbia, for the county of Washington, and which said record of the proceedings aforesaid is in the words and of the tenor following, to wit:

Record for Alex'a county.

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the judges of the United States circuit court of the District of Columbia, for the county of Alexandria, the 12th day of November, 1841.

BE FRANCES SWANN, *plaintiff,*
against
THE ALEXANDRIA CANAL COMPANY, *defendants.*

Be it remembered, that heretofore, to wit, at the rules held in the clerk's office of said court, for the month of July, 1839, came the plaintiff by Swann, esquire, her attorney, and filed there a certain bill against the defendants, which bill is in the words and figures following, to wit:

DISTRICT OF COLUMBIA, *Alexandria county, to wit:*

Frances Swann complains of the Alexandria Canal Company being in custody, of a plea of trespass, for that the said Alexandria Canal Company, on the first day of January, in the year 1835, and on divers other days and times between that day and the day before the commencement of this suit, with force and arms, broke and entered the close of the said plaintiff, that is to say, a certain close called Preston, situate, lying

and being in the county of Alexandria, and then and there tore up, subtracted, damaged, spoiled, and hauled away the earth and soil of said close of the said plaintiff, and other wrongs to her the said plaintiff then and there did, to the great damage of the said plaintiff, and against the peace and dignity of the commonwealth. Wherefore the said plaintiff saith she is injured and hath sustained damage to the value of fifteen thousand dollars, and therefore she brings suit.

SWANN, *for pl'ff.*

And the defendant being arrested, and not appearing, on the motion of the plaintiff, by *his* attorney, it is ordered that judgment be entered for the plaintiff against the defendants for what damages the plaintiff hath sustained, by occasion of the defendant's non-performance of the promise and assumpsit in the declaration mentioned, unless the said defendant shall appear and plead to issue at the next rules.

And at another day, to wit, at the rules held in the clerk's office of said circuit court for the month of September, in the same year, to wit, in the year 1839, came the plaintiff aforesaid, by *his* attorney, and the defendant still failing to appear, on the motion of the plaintiff, by his attorney, it is ordered that the last order made against *him* in this cause be confirmed, and that the plaintiff's damages be ascertained by a jury at the next term.

And at another day, to wit, at a court continued and held for said county and district, the 12th day of May, 1840, came the plaintiff, by her attorney, and the said defendants by their attorney, and the said defendant, the said Alexandria Canal Company, by Thomas Simms, *their* attorney, come and defend the force and injury, when, &c., and say that they are not guilty of the said supposed trespasses above laid to their charge, or any part thereof, in manner and form, as the said Francis Swann hath above thereof complained against them, and of this the said defendants put themselves upon the country, &c.

2. And for a further plea in this behalf, as to the said supposed trespasses in the said declaration mentioned, the said Alexandria Canal Company, by leave of the court here for this purpose first had and obtained according to the form of the statute in that case made and provided, say, that the said Frances Swann ought not to have or maintain her action aforesaid thereof against them, because they say that the said defendants were not guilty of the said supposed several trespasses in the said declaration mentioned, or of any or either of them, or of any part thereof, in manner and form as the said Frances Swann hath above thereof complained against them, at any time within five years next before the commencement of the action of said Francis against the said defendants in this behalf, and this they are ready to verify; wherefore, they pray judgment if the said Francis ought to have or maintain her aforesaid action thereof against them, &c.

3d. And for further plea in this behalf, as to the said supposed trespass in the said declaration mentioned, the said Alexandria Canal Company, by leave of the court here for this purpose first had and obtained,

according to the form of the statute in that case made and provided, say, that they did, by their servants and laborers, enter on, and dig, and remove the soil of the plaintiff as above thereof complained in the said declaration; but they say that the said Frances Swann ought not to have or maintain her action aforesaid thereof against them, because they say, that by an act of the Congress of the United States, passed and approved, the said defendants were, on a certain event or contingency therein expressed—and reference to which act is hereby made for the greater certainty—declared to be incorporated into a company by the name of the Alexandria Canal Company, with certain powers and duties as specified in the said act; and because the said defendants say that the said event or contingency did happen, and all the contingencies and duties imposed by the said act were fulfilled and performed by these defendants, who thereby became a body corporate under the said name as provided in and by the said act of Congress; and because the said defendants say, that by the 17th section of said act of Congress, it is among other things enacted "that whenever it shall become necessary to subject the lands "of individuals to the purposes provided for in this act, and their consent "cannot be obtained, it shall and may be lawful for the company to en-"ter upon such land, and proceed to the execution of such works as "may be requisite." And because these defendants say, that in prosecution of the object of their incorporation, it did become necessary to subject the lands of the plaintiff—(being the same lands, close, or soil in the said plaintiff's declaration mentioned,) to the purposes provided for in the said act of Congress; and because they say, that the consent of the plaintiff could not be obtained to the said company's subjecting her lands and soil, in the said declaration mentioned, to the purposes provided for in the said act of Congress; and because they say, that by the powers vested in them by the said act of Congress, their entry on the said soil, and digging, and conveying the same away, was lawful, and was fully justifiable; and the said entry, &c., and digging the soil, were not unlawful, tortuous or wrongful, as in the said declaration complained; and because they say, that ample compensation is provided in and by the 13 § of the said act of Congress to the said Frances, for said entering and digging the soil, as she hath in manner and form thereof complained against them; and because they say, that they are, and always have been, ready to make such compensation to the said Frances as may be adjudged to be her damages, on her instituting such proceedings to ascertain and recover the same, as are provided for and secured to the said Frances in and by the said 13 § of the said act of Congress; and all this they are ready to verify. Wherefore, they pray judgment if the said Francis ought to have or maintain her action aforesaid thereof against them, &c.

And at another day, to wit, at a court continued and held for the county and district aforesaid, the 15th day of October, 1840, came the parties aforesaid, by their said attorneys, and the plaintiff by her attorney moved the court to change the venue from the county of Alexandria to the county of Washington, in said District, and filed the following affidavit:

Francis Swann, plaintiff, in an action of trespass against the Alexandria Canal Company, now pending in the circuit court of the county of Alexandria, in the District of Columbia, suggests to the court here, that she has good reason to think and believe, that a fair and impartial trial of the above action cannot be had in Alexandria county, where such action is depending. She, therefore, prays that the said action may be removed into the court holden in Washington county for trial.

The reasons of such her belief, that she cannot have a fair and impartial trial of said action in the said county of Alexandria, are the following:

Because she verily thinks and believes, that the town of Alexandria, as a community, and the neighboring county round, and numerous of the most influential individuals, both in town and country, are all deeply interested in the prosperity and completion of said canal; that the said canal is generally looked to by such community, and by all individuals most deeply interested in the trade and prosperity of the town, as the ultimate and great resource from which a considerable and extensive improvement in such trade and prosperity is expected, and upon which the continued prosperity of the town mainly depends; that besides the general interest felt by the citizens of Alexandria, and of the surrounding country, as members of a commercial community, or of communities whose prosperity is deeply connected with the prosperity and extent of trade, there are in the said town and neighborhood many of the most considerable and influential individuals directly interested as stockholders in the canal; that the result of this suit, if the plaintiff succeeds in establishing such points of law as she is advised by able counsel she may, and such facts as she feels confident it will be in her power to prove, will be deeply hurtful and injurious to the prospects of the said canal, or raise such obstructions to the prosecution of the work from the heavy damages incurred by the manner of its prosecution heretofore, as will deeply impair the whole project; and there is reason to presume, and she does verily suspect and believe, that for these reasons common cause will be made against her in said cause, by the numerous and influential individuals interested to defeat her, and it will be extremely difficult, if not impracticable, to obtain a jury in said county of Alexandria, who, or a portion of whom, will not be under a bias, secret or open, against her side of the cause.

Sworn to before me, a justice of the peace for the county of Washington, in the District of Columbia, this 10th day of October, 1840.

(Signed,) SAMUEL DRURY, *J. P.*

Wm. B. Alexander appears before me, and makes oath that he concurs in the statement above made, and believes as above stated. Sworn to this 10th day of October, 1840.

(Signed,) SAMUEL DRURY, *J. peace.*

And thereupon came the defendants, by their attorney, and filed the following affidavits:

ALEXANDRIA COUNTY, *to wit:*

This day came before me, a justice of the peace for the county afore-

said, George R. Taylor, Robert Bell, Charles H. Lee, Newton Kune, Peter Brenner, George H. Duffey, Jno. B. Hancock, Jno. Corse, Henry T. Wilbar, Jno. T. Evans, William W. Adams, who made oath in due form that they are not stockholders in the Alexandria Canal Company, and that they verily believe that a fair and impartial trial can be had in said county of the suit of Francis Swann vs. the Alexandria Canal Company, now pending in the circuit court of the District of Columbia, for Alexandria county, and that they are nowise interested in the event of said suit.

Given under my hand, this 14th day of October, 1840.

(Signed,) CHA. McKNIGHT.

ALEXANDRIA COUNTY, *ss.*

This day came before me, a justice of the peace for the county aforesaid, George C. Harvey, and made oath in due form, that he is not a stockholder in the Alexandria Canal Company, and that he verily believes a fair and impartial trial can be had in said county, of the suit between Francis Swann and the said Alexandria Canal Company, now pending in the circuit court of the District of Columbia, for the county aforesaid.

Given under my hand, this 10th of October, 1840.

(Signed,) ALEX'R WAUGH.

ALAXANDRIA COUNTY, *to wit:*

This day came before me, a justice of the peace for said county, William Harper, and made oath in due form, that he is not a stockholder in the Alexandria Canal Company, and that he verily believes that a fair and impartial trial can be had in the said county, of the suit between Francis Swann and the said Alexandria Canal Company, now pending in the circuit court of the District of Columbia, for the county aforesaid.

Given under my hand, this 10th of October, 1840.

(Signed,) ALEX'R WAUGH.

ALEXANDRIA COUNTY, *to wit:*

This day came before me, a justice of the peace for the county aforesaid, Andrew D. Crosby and Thomas A. Waters, and made oath in due form, that they are not stockholders in the Alexandria Canal Company, and that they verily believe that a fair and impartial trial can be had in said county, of the suit between Frances Swann and the said Alexandria Canal Company, now pending in the circuit court of the District of Columbia, for the county aforesaid.

Given under my hand, this 10th day of October, 1840.

(Signed,) ALEX'A WAUGH.

Which said motion for a change of venue the court take time to consider, and this cause is continued.

And at another day, to wit, at a court continued and held for the county and district aforesaid, the 12th day of November, 1841, came the parties aforesaid, by their attornies, and upon the plaintiff's motion, the

venue in this cause is changed to Washington county, in the District of Columbia.

DISTRICT OF COLUMBIA, *Alexandria county, to wit:*

I, Cassius F. Lee, clerk of the U. S. circuit court of district and county aforesaid, do hereby certify, that the foregoing is a full and true transcript of the proceedings had in the said cause, wherein Francis Swann is plaintiff, and the Alexandria Canal Company are defendants, made from the records in my office.

[L. S.] In testimony whereof I hereto set my hand, and the seal of the said court, this 27th day of December, 1841.

CASSIUS F. LEE, *C. C.*

Appearance of defendants, and cause continued to March term, 1842.

And the said defendants also appear in court here, by Richard S. Coxe, esquire, their attorney.

Thereupon further process of and upon the premises aforesaid, by consent of the said parties, by their attornies aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of March next.

Appearance and continuance to Nov. term, 1842.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-two, to which said day the said cause was continued, come again into the circuit court here, as well the said plaintiff by her attorney aforesaid, as the said defendants by their attorney aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attornies aforesaid, and by order of the court here thereon, the said cause is further continued until the fourth Monday of November next.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two, to which said day the said cause was continued, come again into the circuit court here, as well the said plaintiff, by her attorney aforesaid, as the said defendants, by their attorney aforesaid: thereupon, on motion of the said plaintiff by her attorney aforesaid, and by leave of the court here first had and obtained, the said plaintiff, by her attorney aforesaid, filed in court here the following amended nar., to wit:

Amended nar.

DISTRICT OF COLUMBIA, *to wit:*

Whereupon the said Francis Swann, by her attornies, Swann & Swann, complains, for that the said Alexandria Canal Company, heretofore, to wit, on the first day of January, in the year eighteen hundred and thirty-five, and on divers other days and times between that day and the day before the commencement of this suit, with force and arms, broke and entered the close of the said plaintiff, that is to say, a certain close

called Preston, situate, lying, and being in the county of Alexandria and District of Columbia, and bounded as follows, to wit: beginning at a large pin oak, near the shore of the river Potomac; thence south eighty-five and a half degrees west, to the east side of the Washington and Alexandria turnpike road; thence with the said road to Four-Mile creek; thence with the meanders of said creek to Potomac river; thence with the meanders *of* of said river to the intersection with the said river of a due east course, from the before mentioned pin oak; thence from the said intersection to the pin oak, the beginning; and then and there tore up, subverted, damaged and spoiled, and hauled away the earth and soil of the said close of the said plaintiff, and other wrongs to her the said plaintiff then and there did, to the great damage of the said plaintiff, and against the peace and dignity of the United States. Wherefore the said plaintiff saith she is injured and hath sustained damage to the value of fifteen thousand dollars, and therefore she brings her suit.

SWANN, *for plaintiff.*

Plea of not guilty—issue joined—venire facias.

And the said defendants, by their attorney aforesaid, come and defend the force and injury, when, and so forth, and say, that they are not guilty of the said trespass in manner and form as the said plaintiff above against them hath complained, and of this they put themselves upon the country; and the said plaintiff, by her attorney aforesaid, in like manner, and so forth. Therefore, let a jury thereon appear before the court here, on the fourth Monday of March next, by whom, &c., and who neither, and so forth, to recognise, and so forth, because as well, and so forth.

Cause referred to arbitrators.

Whereupon this cause standing ready for trial, the parties aforesaid, by their attorneys aforesaid, moved the court here, that the whole matter in the premises between them in variance may be referred, according to the act of assembly in such case made and provided, to persons indifferent between the said parties, to be appointed by the court here, with the consent of the said parties, to adjust the same; whereupon, by consent of the said parties, by their attornies aforesaid, it is ruled by the court here, that the whole matter in variance between the said parties be referred to Dennis Johnson, W. L. Powell, Thomas Carbery and Peter Force; and the said parties, by their attornies aforesaid, file in court here the following terms of reference, to wit:

Terms of reference.

To value the entire damage to the freehold, from the first entry of the Canal Company on the premises in question, to the time of the arbitration.

The damage from the disturbances, if any, to the proprietors of the said premises and interruptions to the cultivation of the same, from the operations of the company or their laborers and agents on the premises, during all the time aforesaid.

To value the land required by the company for permanent occupation, of which a precise description and survey, by metes and bounds, shall be furnished to the arbitrators.

The award of the arbitrators, or major part of them, to be returned during the next session of this court, and made the judgment of the court for the whole sum awarded for such damages and value of the land as aforesaid, as if a verdict for so much had been found in this action.

Upon payment of such judgment, the plaintiff agrees to give defendants a deed of conveyance for the land so set apart for the permanent occupation of the defendants.

To be referred to four arbitrators, with power to the arbitrators to appoint an umpire, in case the arbitrators, or a majority of them, cannot agree on any point or points in controversy; and the umpirage of such umpire to be confined to such point or points of difference; and his umpirage to constitute a part of the said award. The said arbitrators shall be appointed on or before the 10th January next, and shall be appointed as follows: each of the parties shall produce to the other a list of ten persons, none of whom shall be stockholders, or officers, or servants, or agents, of the said company, nor proprietors of lands, having any unsettled controversy with the said company for damages to their freehold, or value of land taken by the company. Out of the list so produced by defendants, the plaintiff shall choose two of the arbitrators, and out of the list so produced by plaintiff, the defendants shall choose the other two; and the four so chosen shall constitute the four arbitrators aforesaid.

A reference and arbitration upon the principles and conditions aforesaid, shall be entered in due form, as a rule of court, on or before the said 10th January.

W. JONES, *for pl'ff.*
Washington, Dec. 27, 1842. TH. SEMMES, *for def't.*

Whereupon the said plaintiff, by her attorney, filed in court here the following paper, to wit:

Selection of arbitrators.

FRANCIS SWANN,
vs.
THE ALEXANDRIA CANAL COMPANY.

Plaintiff's choice.

The plaintiff in this suit, by Swann & Swann, her attornies, makes the following selection of gentlemen as arbitrators, from the list of ten, furnished by the defendants, to wit: Dennis Johnson, Dr. Wm. L. Powell.

And the said defendants, by their attorney aforesaid, filed in court here the following paper, to wit:

ALEXANDRIA CANAL COMPANY,
ads.
FRANCES SWANN.

Defendant's choice.

The defendants in this suit, by Thomas Semmes, their attorney, make the following selection of gentlemen as arbitrators, from the list of ten, furnished by the plaintiff, viz: Thomas Carbery, Peter Force.

SWANN & SWANN, *for pl'ff.*
TH. SEMMES, *for def'ts.*

Washington, Jan'y 10, 1843.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the court here thereon, the said cause is further continued until the fourth Monday of March next.

March term, 1843.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-three, to which said day the said cause was continued, came again into the circuit court here, as well the said plaintiff by her attorney aforesaid, as the said defendants by their attorney aforesaid.

Whereupon the said plaintiff, by her attorney aforesaid, on the second day of September, in the year of our Lord one thousand eight hundred and forty-three, filed in court here the following umpirage and award of Manyadier Mason, to wit:

Umpirage and award of M. Mason.

FRANCIS SWANN,
vs.
THE ALEXANDRIA CANAL CO. } Trespass, &c.

Whereas Dennis Johnson, William L. Powell, Thomas Carbery and Peter Force, the arbitrators to whose arbitrament and award the said suit of Francis Swann against the Alexandria Canal Company, depending in the circuit court of the District of Columbia, for the county of Washington, was referred and submitted, by consent of parties, and by order of said court, upon certain terms and conditions in the proceedings in the said suit set forth, with power and authority to the said arbitrators to appoint an umpire, and submit to his umpirage and determination any point or points of difference wherein they, or a majority of them, cannot agree, upon such terms and conditions as are in the said reference and submission, particularly set forth; and whereas the said arbitrators, after a full hearing and examination of all the evidence, and of the arguments of counsel, as well on the part of the plaintiff as on the part of the defendants, did, on the 29th day of July last, proceed, in the due pursuance and execution of the terms and conditions of the said reference and submission to consider of their final determination and award in the premises, and upon such consideration did differ among themselves upon the several points of controversy referred and submitted to them as afore-

said, so that a majority of them could not agree on the said points of controversy, or any one of them, being equally divided in opinion, two of them agreeing in one award, and the other two agreeing in a different award.

First, of the sum of money to be assessed and awarded to the plaintiff for the entire damage to the freehold in question, from the first entry of the said Canal Company on the premises in question, to the time of the said arbitration.

Secondly, of the sum of money to be assessed and awarded to the plaintiff for the damages, from the disturbances to the proprietors of the said premises, and interruptions to the cultivation of the same, from the operations of the said company, or their labourers and agents, on the said premises, during all the time aforesaid.

Thirdly, of the sum of money to be assessed and awarded to the plaintiff for the value of the land required by the said company for permanent occupation, of which a precise description and survey was furnished to and laid before the said arbitrators by the defendants, pursuant to the requirement of the said reference and submission.

And whereas the said arbitrators, in the further pursuance and due execution of the terms and conditions of the said reference and submission, did appoint the subscriber as umpire of their said differences in the premises, and duly submit to his final determination and umpirage all the aforesaid points of difference between them.

Now, be it known, that I, the said Maynadier Mason, in the due pursuance and execution of the said umpirage, and of the terms and conditions of the said reference and submission, having first heard and duly considered the premises, and especially all the said evidence and arguments of counsel, as well on the part of the plaintiff as on the part of the defendants, and having duly considered and weighed the statements of the said arbitrators, and the reasons on which they respectively founded their opinions and judgments, and the differences in their respective opinions and judgments, on the several points of difference aforesaid, have determined, judged, and awarded, in concurrence throughout with the opinion and judgment of two of the said arbitrators, from which opinion and judgment the other two arbitrators had differed as aforesaid. First, that, on the said first point of difference, the damage to the freehold from the first entrance of the Canal Company, to the time of the said arbitration, is three thousand four hundred and sixty-eight dollars and seventy-five cents, with the addition of interest at the rate of six per cent. per annum on fifteen hundred dollars, part thereof, for the term of ten years.

Secondly, that, on the said second point of difference, the damage from the disturbances and interruptions therein mentioned, during all the time aforesaid, is one thousand dollars; and,

Thirdly, that the value of the land required by the company, for permanent occupation as aforesaid, according to such description and survey as aforesaid, which is hereto annexed, copied in page ,) is one thousand dollars, with the addition of interest thereon, at the rate aforesaid, and for the term aforesaid.

Wherefore I, M. Mason, have determined and awarded, and by these presents do determine and award, that the defendants pay to the plaintiff the gross sum of six thousand nine hundred and sixty-eight dollars and seventy-five cents, in full satisfaction of all the matters of damages and value submitted to my final determination and umpirage as aforesaid.

Witness my hand and seal, this fourth day of August, A. D. eighteen hundred and forty-three.

M. MASON. [SEAL.]

Award of Carbery and Force.

Award of Thos. Carbery and Peter Force, esq'rs.

We, Thomas Carbery and Peter Force, two of the arbitrators mentioned in the foregoing and annexed umpirage and award of Maynadier Mason, esq., do hereby make known and certify, that the said umpirage and award of the said Maynadier Mason, on all the matters and points of difference therein mentioned, is in conformity and agreement with the original opinions formed and delivered by us, as two of the said arbitrators, in the matters of controversy submitted to the four arbitrators as aforesaid; and that such would have been our final determination and award in the premises, if the two other arbitrators would have concurred with us in such award; and that still concurring and agreeing with the terms of the said umpirage and award, we do hereby unite and agree with the said umpire, in the several sums and amounts of damages and value on the several points of difference stated by him in his said umpirage and award, and do with the like concurrence and agreement hereby determine and award, that the said defendants pay to the plaintiff such gross sum of six thousand nine hundred and sixty-eight dollars and seventy-five cents, as is therein determined and awarded by said Maynadier Mason, in full satisfaction of all the matters of damages and value originally submitted to the arbitrament and determination of the said four arbitrators; and finally, to the umpirage and determination of the said Maynadier Mason, as aforesaid.

Witness our hands and seals, this twelfth day of August, in the year one thousand eight hundred and forty-three.

THO. CARBERY, [SEAL.]
PETER FORCE. [SEAL.]

Notice for judgment.

Whereupon it is ruled by the court here, that the said defendants show cause to the court here, on the first day of next term, why the court shall not proceed to enter judgment upon the umpirage and award of the arbitrators, so as aforesaid filed by them in this cause.

Nov. term, 1843.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-three, to which said day the said cause was continued, come again into the circuit court here, as well the said plaintiff, by her attorney aforesaid, as the said defendants, by their attorney aforesaid.

And the said plaintiff, by her attorney aforesaid, on the 11th day of January, 1844, filed in court here the following exhibits, to wit:

Affidavit of Thomas Carbery and Peter Force.

Affidavit of Tho. Carbery and Peter Force.

In the circuit court of the District of Columbia, for the county of Washington.

FRANCES SWANN, *pl'ff.*
vs.
THE ALEXANDRIA CANAL CO., *deft's.*

DISTRICT OF COLUMBIA, *county of Washington, to wit:*

Thomas Carbery and Peter Force make oath, that in pursuance of their appointment, together with Dennis Johnson and William L. Powell, esquires, as arbitrators to determine the matters in controversy, in the suit between Frances Swann, pl'ff, and the Alexandria Canal Company, defendants, all the said arbitrators did, on the 26th June last, meet at Washington, for the purpose of fixing upon the course of their procedure; that at such meeting it was agreed among them all, in the first place, to anticipate the possibility of such disagreement among them as might make the intervention of an umpire necessary, by immediately naming and appointing such umpire, so that he might accompany the arbitrators, and be present with them at all their examinations into the merits of the controversy; that, in pursuance of such resolution, they appointed Maynadier Mason, esquire, (he being the person nominated and proposed by Messrs. Johnson and Powell as such umpire; and all the arbitrators at the same time signed a minute of such appointment, which is hereto annexed, marked T. C. P. F. (A,) (copied in page 33.) That said Mason undertook such office of umpire, upon being notified of his appointment, and accompanied the arbitrators in their personal examination of the land involved in the controversy; and afterwards, at the meeting of the arbitrators, at the City Hall, in the city of Washington, on the 29th of July last, where they met, by appointment, with the parties for the final hearing of the matter in controversy; and at such meeting the parties, with their counsel, duly attended, pursuant to such appointment, and the case was submitted to the arbitrators, after a full hearing and examination of the witnesses and evidence on both sides, and the arguments of their respective counsel; that the said Maynadier Mason, esquire, was present with the arbitrators during the whole of such examination and arguments, and attended to the same in like manner as if the case were already submitted to his arbitrament, his attendance and presence, and the object of his attendance and presence, with the fact of his preliminary and provisional appointment of such umpire, being well known to all the parties and their counsel; that when the examinations of evidence and arguments of counsel were concluded, and the arbitrators were left to themselves to deliberate upon their award, the said Mason still continued with them, and listened to their respective reasons for their respective opinions on the merits of the controversy; that the delibera-

tions of the arbitrators ended in an equal and irreconcileable division of opinion between them on all the several points submitted to their arbitration, and on the award to be rendered on such points. Whereupon such points of difference were, with the common consent of all four of the arbitrators, duly submitted to the determination and umpirage of the umpire so appointed as aforesaid, he being then and there present as aforesaid; that the said umpire did thereupon determine such points of controversy, and make up his umpirage thereon, in such manner and form as is set forth in his award or umpirage, returned by him and these deponents to the court; and these deponents did subjoin thereto their written concurrence therein, returned with the said award or umpirage to the court; to both which they refer, as the same now appear on the files of the court.

And these deponents further make oath that, being advised that it was regular and proper that the four arbitrators should all concur in a return, certifying to the court their proceedings in the premises, &c., &c., they did, on the 7th of August last, address a letter to each of their two colleagues, Messrs. Johnson and Powell, a copy of which (both letters being in the same words) is hereunto annexed, marked T. C. P. F. No. 1, (copied in page 34;) to which they received through the post-office, a letter purporting to be the joint answer of the said Messrs. Johnson and Powell, dated at Alexandria, August 9th; which is also hereto annexed, marked T. C. P. F. No. 2, (copied in page 35.)

That these deponents, on Saturday, the 12th of August, met at the City Hall, and then and there executed, on their part, a paper purporting to be a return and certificate from all the arbitrators to the court of their proceedings in the premises, &c., &c., with a certified copy thereunto annexed of the order of court, referring the case, &c., which they delivered to one of the plaintiff's counsel, in order to have the same presented to the two other arbitrators for their concurrence and signatures, and which, as these deponents were afterwards informed, they refused to sign; the said paper is also hereto annexed, marked T. C. P. F. No. 3, (copied in page 36.)

These deponents have heard nothing on the subject from the two other arbitrators, since their said joint letter of the 9th August, and know not what particular objection, if any, they had to the form or substance of such return and certificate as these deponents had executed as aforesaid; these deponents were ready to have attended to any suggestions for the amendment of the same, and would most willingly have agreed to any amendment of the same in any respect wherein it might have been shown either inaccurate or defective; but they never have been made aware of any special objection, if any such existed, to the accuracy or sufficiency of such return and certificate; and now upon their oath say, that to all the matters of fact therein stated, it contains a true and faithful return of the proceedings of the arbitrators in the premises, and of the process of the final determination and umpirage therein referred to.

THO. CARBERY,
PETER FORCE.

Sworn and subscribed to by Tho. Carbery and Peter Force, before me, this 10th Jan'y, 1844. HY. NAYLOR, *J. P.*

Appointment of umpire, T. C. P. F., A, referred to in the above affidavit, page 30.

Appointment of umpire.

GRAND JURY ROOM, *Washington, June* 26, 1843.

Dr. William L. Powell, Dennis Johnson, Thomas Carbery and Peter Force, arbitrators in the case between the Swanns and the Alexandria Canal Company, met at 11 o'clock, A. M.

Maynadier Mason was chosen umpire under the reference.

The arbitrators then adjourned to meet on the land for which damages are claimed, on the 20th July next, ten o'clock, A. M.

WM. L. POWELL, THO. CARBERY,
DENNIS JOHNSON, PETER FORCE.

Exhibit No. 1.

Exhibit T. C. P. F., No. 1, referred to in the aforegoing affidavit of Carbery and Force, at page 32.

In the circuit court of the District of Columbia, for the county of Washington.

FRANCES SWANN, *pl'ff.*,
vs.
THE ALEX'A CANAL CO., *def't.*

DISTRICT OF COLUMBIA, *county of Washington, to wit:*

Thomas W. Swann makes oath that he did, on the 7th August last, deliver to Dennis Johnson and Dr. William L. Powell, severally, an original letter, addressed to each of them severally, from Thomas Carbery and Peter Force, esquires, a true copy of which letters (both being in the same words, with no difference but in the name of the person to whom each letter was addressed) is hereto annexed, marked T. C. P. F., No. 1.

Sworn to before HY. NAYLOR, *J. P.*
10th Jan'y, 1844.

Sir: We understand it to be necessary for us to have another meeting of the arbitrators in the case of Frances Swann against the Alexandria Canal Company, in order to certify their proceedings in the matter in controversy, the difference between the arbitrators on the several points submitted in their arbitration, their appointment of the umpire, and such other matters as may be necessary to make up a full return to the court. We, therefore, respectfully ask your attendance at our late place of meeting—the grand jury room, in the City Hall—at eleven o'clock, on Saturday next, the 12th inst., for the purpose of considering and deciding on the form of the proper return to be made of the actual proceedings already had in the case, and of signing the same.

Respectfully, &c.,

(Signed,) PETER FORCE,
Washington, August 7, 1843. THO. CARBERY.

Ex. No. 2.

Exhibit T. C. P. F., No. 2, referred to in the aforegoing affidavit of Carbery and Force, page 32.

ALEXANDRIA, *August* 9.

To PETER FORCE and THO. CARBERY, esq'rs.

Gentlemen: We, the undersigned, two of the arbitrators in the case of Mrs. Frances Swann against the Alexandria Canal Company, for reasons entirely satisfactory to ourselves, respectfully beg leave to decline acceding to the proposition contained in yours of the 7th inst. We feel no disposition to throw any obstacle in the way of *your* making a full return to the court, but we wish time to consult Mr. Coxe, the counsel for the Canal Company, (who has been absent since our last meeting,) before we shall decide on the course we shall pursue in this business.

With the highest respect, we remain your ob't serv'ts,

WM. L. POWELL, and
DENNIS JOHNSON,
By WM. L. POWELL.

Exhibit T. C. P. F., No. 3.

Exhibit T. C. P. F., No. 3, referred to in the foregoing affidavit of Carbery and Force, page 32.

FRANCES SWANN, *pl'ff.*
vs.
THE ALEX'A CANAL CO., *def't.*
} Trespass, &c.

Whereas Dennis Johnson, William L. Powell, Thomas Carbery and Peter Force, the arbitrators to whose arbitrament and award the said suit of Frances Swann against the Alexandria Canal Company, depending in the circuit court of the District of Columbia, for the county of Washington, was referred and submitted, by consent of parties, and by order of the said court, upon certain terms and conditions in the proceedings in the said suit set forth, with power and authority to the said arbitrators to appoint an umpire, and to submit to his umpirage and determination any point or points of difference wherein they, or a majority of them cannot agree, upon such terms and conditions as are in the said reference and submission particularly set forth; a certified copy of the proceedings in the said court for the submission of the said case to such arbitration, and the appointment of such arbitrators, &c., is hereto annexed; and whereas the said arbitrators, after a full hearing and examination of all the evidence and of the arguments of counsel, as well on the part of the plaintiff as on the part of the defendants, did, on the 29th of July last, proceed in the due pursuance and execution of the terms and conditions of the said reference and submission, to consider of their final determination and award in the premises, and upon such consideration did differ among themselves upon the several points of controversy referred and submitted to them as aforesaid, so that a majority of them could not agree on the said points of controversy, or any one of them, being equally

divided in opinion—two of them agreeing in one award, and the other two agreeing in a different award.

First, of the sum of money to be assessed and awarded to the plaintiff, for the entire damage to the freehold in question, from the first entry of the said Canal Company on the premises in question, to the time of the said arbitration.

Secondly, of the sum of money to be assessed and awarded to the plaintiff for the damages from the disturbances to the proprietors of the said premises, and interruptions to the cultivation of the same, from the operations of the said company, or their labourers and agents on the said premises, during all the time aforesaid.

Thirdly, of the sum of money to be assessed and awarded to the plaintiff for the value of the land required by the said company for permanent occupation, of which a precise description or survey was furnished to and laid before the said arbitrators by the defendants, pursuant to the requirement of the said reference and submission.

Now, we, the said arbitrators, do hereby make known and certify that, in the further pursuance and due execution of the terms and conditions of the said reference and submission, all the said arbitrators, after having first proposed among themselves different persons, to be appointed such umpire as aforesaid, and duly considered of such appointment, finally concurred in the appointment of, and did thereupon appoint Manyadier Mason, esquire, as such umpire of their said differences in the premises, and did duly submit to his final determination and umpirage all the aforesaid points of difference between them, according to the terms and conditions of the reference and arbitration aforesaid.

Witness our hands and seals, this 12th day of August, in the year one thousand eight hundred and forty-three.

[SEAL.]
[SEAL.]
THO. CARBERY, [SEAL.]
PETER FORCE. [SEAL.]

FRANCIS SWANN, *pl'ff.*
vs.
THE ALEX'A CANAL CO.

I, William Brent, clerk of the circuit court of the District of Columbia, for the county of Washington, hereby certify, that in the record of proceedings in the said suit, it appears that at the November term, 1842, of the said court, a jury was duly sworn to try the issue joined between the parties in the said suit; that said jury was, by consent of parties, withdrawn, and that the whole matter in controversy was, by like consent of parties, referred to the arbitrament and award of Dennis Johnson, William L. Powell, Thomas Carbery and Peter Force, with power, &c., &c., pursuante to certain terms of arbitration and umpirage, agreed to and signed by the counsel and attorneys of the parties respectively, and filed as a part of the record and proceedings in the said suit, in the words following: (copied in page 19.)

And I do further certify that, in pursuance and execution of the said terms of arbitration and award, the parties aforesaid, by their respective counsel and attorneys, did make their election in writing, signed by such counsel and attorneys respectively, of the arbitrators, to whose arbitrament and award the said suit was referred as aforesaid, to wit, the said Dennis Johnson, William L. Powell, Thomas Carbery and Peter Force; which election, in writing, is also filed as a part of the said procedure and record in the words following: (copied in page 21.)

Test: W. BRENT, *Cl'k.*

Affidavit of service of umpirage and award.

Affidavit of the service of umpirage and award.

FRANCES SWANN, *pl'ff.*
vs.
THE ALEX'A CANAL CO.

DISTRICT OF COLUMBIA, *county of Washington, to wit:*

Thomas Woodward, of the county and district aforesaid, makes oath that he did, on the 5th day of January, 1844, deliver to Richard S. Coxe, esquire, attested copies, both of them joined together, (of which the annexed are true copies,) (copied in pages 23, 24 and 27,) of an umpirage and award, made under a rule of the circuit court of the District of Columbia, for Washington county, in a cause in the said court depending, between Mrs. Frances Swann, plaintiff, and the Alexandria Canal Company, defendants.

Sworn to before 11th Jan'y, 1844. H. NAYLOR.

Affidavit of Wm. T. Swann.

Affidavit of Wm. T. Swann, esquire.

FRANCES SWANN, *pl'ff.*
vs.
THE ALEX'A CANAL CO., *def't.*

DISTRICT OF COLUMBIA, *county of Washington, to wit:*

William T. Swann, of the county and district aforesaid, makes oath, that he did, on the 25th of August, 1843, call on Dennis Johnson, one of the arbitrators in the above cause, for the purpose of obtaining his signature to the paper bearing the signatures of two of the arbitrators (Messrs. Carbery and Force) dated the 12th of August, 1843, as a return and certificate on their part to the court, of the proceedings of the arbitrators in the said case, &c., &c.; that he stated to him (Mr. Johnson) in effect, that he had been requested to bring down that paper for the signatures of the arbitrators; that Mr. Johnson took the paper and read it, and then said in substance, that he would state to him candidly that the award was so far beyond what he thought right, that he could not sign the paper, or any paper; that he could not do any thing to sanction the award. And at one time said, substantially, that it was so far beyond what he expected or thought right, that he could not sanction or

legalize it. That if he signed this paper, it would always appear that he approved of an award to that extent. That he could not sign any paper that would have any bearing to such an award. That he was willing to certify or send in a paper expressive of what he thought a just award. Finally stated, that if he, deponent, would leave the paper with Dr. Powell, he would call in the morning and consult, and would see what he (Mr. Johnson) would do. He did not think that under any circumstances he would sign it. Deponent saith, that during the conversation he stated to Mr. Johnson, in substance, that it was not an award he wished him to sign, but merely a certificate of what had actually happened. He (Mr. Johnson) stated in substance that he knew it—that it was an *entering wedge.*

Mr. Johnson said, substantially, at one time during the interview, that the appointment of an umpire was notorious—that every body knew it.

Deponent said to Mr. Johnson, substantially, that he supposed he knew the importance of the paper in the proceedings, to which he replied that he did.

Mr. Johnson said to deponent, in substance, that if they could get the court to act on the award, well and good; but that he could not sanction it, or do any thing to sanction it, or to that effect.

Deponent further states, that he called on Dr. William L. Powell, another of the arbitrators in the above cause, on the said 25th August, 1843, for the purpose of procuring his signature also to the said certificate, and stated to him, in substance, that he had brought down a paper it was necessary for the arbitrators to sign, before a return was made to the court. He (Dr. Powell) took the paper and read it; and then stated, in substance, that he considered the award a most enormous one; that he would do nothing on his part to throw any obstacle in the way of the other arbitrators making a return or award, deponent does not know which. That the award had been made by a majority of arbitrators, and that a return had been or would be made by them, and he supposed the court would act on it. That he had been determined to send in a paper stating his opinion, and let it have what effect it would with the court. That he would state candidly that he had been wanting to see Mr. Coxe, and had advised Mr. Fowle (meaning the President of the Alexandria Canal Company) to send to Washington to see if Mr. Coxe had returned, in order to know how he ought to act, entertaining the opinions which he did. That if he (deponent) would leave the certificate with him he would engage to have it sent, or would bring it himself in time for court. That he would certainly throw no obsticle in the way of a return. Deponent stated in substance, that if the certificate was not signed it would be throwing a most insurmountable obsticale in the way. He replied, substantially, that he was not prepared at that time to sign the paper, but that if he (deponent) could leave it, he would determine on what course to be pursued, and send or bring it to Washington.

Dr. Powell again said to deponent as he left, in substance, that he might rest assured that he (Dr. Powell) would throw no obsticles in the way of a return or award, he does not know which expression.

Deponent saith, that he did not leave the certificate until next day, when he had another interview with Dr. Powell.

Deponent further saith that he went to Alexandria the next day after the above interview with Dennis Johnson and Dr. Wm. L. Powell, that is to say, on the 26th day of August, 1843, for the purpose of delivering to each of them a letter from Mrs. Frances Swann, the plaintiff in the above named cause, dated the 26th day of August, 1843, a copy of which is hereto annexed, marked F. S., (copied in page 49.)

Deponent saw Dennis Johnson in Alexandria, and produced the certificate, and made some explanations to induce him to sign it, most of which are some or all of the arguments in the said letter above named, marked F. S., and among them, in substance, that, without the certificate, the award would not be valid; and that we did not ask him to sign any award, but merely to give a certificate of facts that had actually occurred; that he could, if he thought proper, send in a paper expressive of the amount he thought it right to give; that his votes showed that he was opposed to the amount, but that this paper had no relation to the amount, but merely to the facts that had actually occurred. He (Mr. Johnson) stated, in substance, during the course of this interview, that he did not know before that the want of that certificate would defeat the award; that he would see Dr. Powell, and hoped, if deponent did not see Dr. Powell, that he would leave the certificate at his house. Deponent thought that there was some probability of his signing it. He (Mr. Johnson) asked deponent what Dr. Powell said the day before on the subject. Deponent stated that he had said that he did not intend to throw any obsticles in the way, when Mr. Johnson replied, in substance, neither did he.

Deponent gave Mr. Johnson the letter above mentioned, who read it and remarked, that he understood it, or to that effect.

Mr. Johnson accompanied deponent in the evening of the same day, to Dr. Powell's house, when he had an interview with Dr. Powell in the presence of Mr. Johnson.

Deponent again produced the certificate and handed it to Dr. Powell, and explained the object of it, by stating, in substance, that the award would be defeated without it, and the certificate was necessary to bring the award before the court, and that then each party could urge what objections they thought proper. Deponent then went on to state that if the minority of the arbitrators could withhold a paper of that kind, they could in any instance defeat an award. But Dr. Powell interrupted deponent, by stating substantially, that he had no notion of that kind; that he considered it dishonorable to enter in an arbitration, and then because it went against his views, to refuse to give any paper to defeat it. He read the certificate over carefully and aloud, and said, in substance, that he thought he must sign such a certificate; and said, in substance, that Mr. Johnson and himself had always acted in concert in this matter, and that they would consult. Dr. Powell and Dennis Johnson then retired. When they returned, Dr. Powell stated, in substance, that they or he (deponent does not recollect which) would retain the paper until Mon-

day, and either sign that paper, or draw up another, leaving out some parts which he considered unnecessary and bearing on the award, or send some paper explanatory of their course.

Mr. Johnson said, in effect, that he did not think that he (Mr. Johnson) ought to sign any paper to sanction or legalize such an award as that; that if they could get it without, well and good.

Deponent then said, substantially, that he would be glad to understand him (Mr. Johnson) distinctly, whether if he knew that his refusal to sign this paper would entirely defeat this award, whether he would withhold his name.

He (Mr. Johnson) replied, substantially, that he meant that he would not (or ought not, deponent does not recollect which,) sign any paper to keep it from being defeated. Dr. Powell remarked, in substance, that he was at a loss to know what were his duties as an arbitrator; and both said, in substance, that they were unacquainted, and wished to advise; Mr. Johnson having said this after Dr. Powell.

Deponent remarked, in substance, during the interview that the law threw upon arbitrators the duty of giving a return of the actual facts.

Deponent stated, in substance, in the presence of both the arbitrators, that he (deponent) wished to be understood, that if the paper was not signed, the whole award would be defeated; that Mrs. Swann would lose the whole sum.

During this interview, deponent delivered the copy of the letter above referred to, of the 26th of August, 1843, marked F. S., hereto annexed; (copied in page 49,) which, however, was not opened by Dr. Powell in his presence.

This deponent says, that the circuit court for this county, was to meet on the following Monday, the 28th August, 1843, and it was not known how long the court would sit, as it was an adjourned session, and it was necessary, under the terms of reference, to make the return of the award or umpirage to the court before its adjournment. That he had, therefore, requested and received Dr. Powell's promise, that the certificate should be sent up in time for the court on Monday. That the said certificate, which had been left with Dr. Powell, not having been returned to him on Monday, deponent sent to Alexandria to Dr. Powell for it, and received in return an order from Reubin Johnson to Richard S. Coxe, esquire, for this paper, and deponent thinks for another, a separate certificate, bearing the signatures of the said two arbitrators (Johnson & Powell.) This was received, deponent thinks, on the Wednesday following, and sent round to Mr. Coxe this order, and received, as well as deponent remembers, the separate certificate of the two arbitrators (Johnson & Powell) which he showed to Gen'l. Jones, in the court room, who expressed disapprobation of the paper, and immediately, in deponent's presence, returned it to Mr. Coxe.

Deponent obtained from Coxe on Thursday or Friday following, the certificate which he had left with Dr. Powell, unsigned by either of the said arbitrators (Johnson & Powell.)

About this time deponent received from Dr. Powell a letter marked W. L. P., (copied in page).

WM. T. SWANN.

Subscribed and sworn to before

H. NAYLOR, *J. peace.*

11th Jan'y, 1844.

Letter from Mrs. Swann to Messrs. Powell & Johnson.

Letter from Frances Swann to Powell & Johnson, referred to—pages 44 and 47.

WASHINGTON, *August 26th*, 1843.

To DENNIS JOHNSON, esq., and Dr. WILLIAM L. POWELL.—Gentlemen: I regret to learn from my son, that you have some hesitation in admitting the propriety of your joining with your two colleagues, Messrs. Carbery and Force, in certifying your proceedings in the arbitration between me and the Alexandria Canal Company. I beg leave very respectfully to remark, that a formal return from the arbitrators to the court, certifying the progress made by them in the arbitration, their disagreement on the several points submitted to them, and the appointment of an umpire, to determine the points of difference between them, is an essential part of the procedure, to bring the award, such as it is, regularly before the court for adjudication on its merits, and subject to all exceptions that either party may allege against it before the court. Nothing is required of you but to authenticate the matter of fact—the actual procedure in the case, down to the appointment of the umpire. I hope, indeed I cannot doubt, that further reflection on your duties as impartial arbitrators, will lead you to the conclusion that your disapproval of the final award, whatever it be, to which the umpire may have come, ought not to be any sort of objection to your uniting with your colleagues in certifying the actual procedure. If that award is objectionable, it is for the court to judge it when formally brought before it; and you, as disagreeing to it, cannot be held, in any degree, responsible for its justice. If it lies open to objections, let it be judged on such objections by the competent tribunal, not indirectly defeated by withholding a due return and certificate of the actual procedure. It must be obvious, I hope, to your impartial minds, that if a dissent from the award were to be held a sufficient reason for the dissenting arbitrators indirectly to defeat the effect of an umpirage appointed by themselves, the terms of the submission must always be nugatory; since any two of the arbitrators, whose opinions might happen to have been overruled, would be equally entitled to have recourse to the same means of defeating it. When the arbitrators accepted and acted upon their appointment in this case, they accepted the whole terms of their appointment, and came under an obligation, in law and conscience, fully to carry out the duties incident to their appointment. If your deliberations had happily resulted in an award in which all, or a majority of the original arbitrators concurred, the incidental duty would necessarily have resulted, of certifying a formal return of their

award. So, when the result was, irreconcileable differences on the points of reference, presenting the precise case, provided for in the submission, for the appointment of an umpire; when that appointment was actually made, and made with your own full approbation and concurrence, the duty seems no less imperative to certify a formal return of the procedure so far in the case.

If there should be any matter of form or of detail, in the certificate and return that has been prepared and signed by your colleagues, which you may wish amended or altered, I hope a short consultation with them may enable you to agree among yourselves upon a proper form; and in that case I pray you to specify to your colleagues what alterations of form, if any, you desire.

I have been now, for a long series of years, perplexed and distressed with this dispute, and had hoped a speedy end to it, which was my chief reason for agreeing to an arbitration.

Very respectfully, your ob't serv't,

FRANCES SWANN.

Letter from Dr. Powell to W. T. Swann, esq.

Letter from Dr. Powell to W. T. Swann, referred to in Mr. Swann's affidavit, page 48.

ALEXANDRIA, *August 29th.*

W. T. SWANN, esq.—Sir: I have felt considerable mortification on learning from Dr. Alexander this evening, the fact that Mr. Reubin Johnson neglected to hand you on Monday morning, the certificate of Mr. D. Johnson and myself of the appointment of Mr. M. Mason, as umpire in the case of Mrs. F. Swann vs. the Canal Company; he was informed by me that we had promised you such a paper, and we considered it a more certain mode of conveying it to you in time than by mail; he has left it with Mr. Coxe. I have obtained from him an order on Mr. Coxe for that and the other certificate which you left with us. This order has been given to Dr. Alexander for you; if Mr. Coxe declines giving up the certificate which was intended for you, we will furnish another. We objected to signing the one left by you, because we thought there were some errors in it as to the period at which the umpire was appointed, and not from any disposition to prevent the case from being brought promptly and fairly before the court.

Very respectfully, your ob't serv't,

WM. L. POWELL.

17*th Jan'y*, 1844—*Judgment on award and umpirage for plaintiff's damages and costs.*

Thereupon, on motion of the said plaintiff, by her attorney aforesaid, and it appearing to the court here that the said plaintiff hath complied with the necessary requisites, as required by law, in order to have judgment upon the umpirage and award aforesaid; therefore it is, this seventeenth day of January, eighteen hundred and forty-four, considered by the court here, that the said plaintiff recover against the said defendants,